

1984 WL 249818 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 2, 1984

*1 Francis K. Sullivan
Executive Secretary
Charleston County Legislative Delegation
Post Office Box 487
Charleston, South Carolina 29402

Dear Mr. Sullivan:

You have asked whether a physician currently serving on the Charleston County Substance Abuse Commission may continue to serve on the commission if he accepts a position as the director of an alcohol and drug unit at a local hospital. Specifically, you have asked our interpretation of the words 'may not serve on the Commission [sic] . . .' as found in Section 1 of Act #452.

Section 1 of Act #452 provides in pertinent part:

No member of the commission shall succeed himself and except as provided herein, persons who are directly involved in any current or proposed substance abuse treatment or educational programs or in law enforcement or who hold elective public office may not serve on the commission but may serve on advisory committees established by the commission under the provisions of this act. (emphasis added)

The classification of persons described in the above position is clear. It applies in part to any persons 'directly involved in any current or proposed substance abuse treatment . . . programs.' Assuming that the alcohol and drug unit referenced above provides treatment to alcohol and drug abusers, it is our opinion that a director of such a unit would fall within the above classification, since he would be directly involved in a treatment program. See 12A Words and Phrases, 'Directly' p. 139 et seq.

The remaining issue is whether the words 'may not serve on the commission,' are mandatory. For the following reasons, it is the opinion of this office that they are.

'Although the form of the verb used in a statute, i.e., whether it says something 'may' or 'shall' or 'must' be done is the single most important textual consideration bearing on whether a statute is mandatory or directory, it is not the sole determinant and what it naturally connotes can be overcome by other considerations,' and '[i]n certain instances the word 'may' has the effect of 'must'.' 2A Sutherland Statutory Construction § 57.03. Of course, '[w]here the language of a statute is clear and unambiguous, courts may hold that the construction intended by the legislature is obvious from the language used.' 2A Sutherland Statutory Construction, supra. Reading the entire sentence in the disputed provision, the words 'may not,' when put into context are mandatory, since a person falling within the classification as discussed above, 'may not serve on the commission, but may serve on advisory committees . . .' It is clear then, that the legislature, using this unambiguous language, intended to exclude persons falling within the above classification from serving on the commission itself, while at the same time allowing such persons to serve on advisory committees.

Since the position you described falls within the classification discussed (assuming the alcohol and drug unit provides treatment to abusers), and the prohibition is mandatory, we would advise that a member of the Charleston County Substance Abuse Commission may not simultaneously serve as a director of an alcohol and drug unit at a local hospital. It is equally clear, that such a director may serve on any advisory committee as established by the commission.¹ This office has repeatedly concluded

that eligibility to public office is of a continuing nature and must continue to exist during the occupancy of the office. Op. Atty. Gen. (May 8, 1875); see also, 63 Am. Jur.2d, Public Officers and Employees, § 42.

Sincerely,

*2 Robert D. Cook

Executive Assistant for Opinions

Footnotes

- 1 It would appear harsh to say that one may not practice his chosen profession, medicine, while serving on the Commission. We note, however, that members of the education and law enforcement professions, and possibly others, are similarly excluded. And, as we note, there are other opportunities for service within the Commission for these professional persons.

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